

HIGHER EDUCATION

SECRETARY OF HIGHER EDUCATION

Rules and Procedures for Implementation of the Higher Education Technology

Infrastructure Act

Proposed Amendments: N.J.A.C. 9A:13-1.1, 1.2, 1.4, 1.5, 1.6, and 1.7

Proposed Repeal: N.J.A.C. 9A:13-1.3

Proposed New Rule: 9A:13-1.5

Authorized By: Rochelle Hendricks, Secretary of Higher Education.

Authority: N.J.S.A. 18A:72A-59 through 71 and P.L. 1997, c. 238.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-017

Submit comments by March 23, 2013 to:

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The agency proposal follows:

Summary

In September 1997, the Higher Education Technology Infrastructure Fund Act (the Act), P.L. 1997, c. 238, was enacted, establishing the Higher Education Technology Infrastructure Fund (the “infrastructure fund” or “fund”) within the New Jersey Educational Facilities Authority (Authority) to be used to develop technology infrastructure within and among New Jersey's institutions of higher education in order to provide access effectively and efficiently to information, educational opportunities, and workforce training and to enhance the connectivity of higher education institutions to libraries and elementary and secondary schools. Recent amendments to the Act in 2012 (the Amending Act) reflect the replacement of the Commission on Higher Education with the Secretary of Higher Education as the State entity statutorily responsible for the coordination and planning of higher education in New Jersey.

The Act provides for the issuance of bonds by the Authority for this purpose with a maximum amount outstanding at any one time not to exceed \$55 million. As bonds are paid off, new bonding capacity is created. Grants were approved for the allocations of the initial \$55 million of bonds. Some of the bonds have now been paid off, thereby resulting in the ability to issue additional bonds to fund new projects. The issuance of additional bonds is subject to the approval of the State Treasurer. The Secretary of Higher Education in consultation with the Authority promulgates the implementing rules, which specify approval processes for the acquisition of technology infrastructure supported by the fund and ensure that the moneys are distributed consistent with the intent of the Act. The Secretary is proposing amendments to the rules outlined below, pursuant to N.J.S.A. 52:14B-1 et seq.

At N.J.A.C. 9A:13-1.1, proposed for deletion is the phrase “an act supplementing the New Jersey Educational Facilities Authority Act, Chapter 72A of Title 18A of the New Jersey Statutes.” Language is also proposed for insertion, which indicates the rules are promulgated by

the Secretary of Higher Education and that the original legislation creating the Higher Education Technology Infrastructure Fund was amended.

Language is proposed for deletion at N.J.A.C. 9A:13-1.2, which removes the definitions of “Act,” “Amending Act,” “Commission,” and “Executive Director.” New definitions are proposed to merge and update the definitions “Act” and “Amending Act” as the new term “Act”; and to amend the definitions for “grant” and “matching funds.” The definition of “grant” is amended for technical compliance with other definition-based amendments and to insert a clause stating that the grants of money are “approved by the Secretary.” The definition of “matching funds” is amended to state that institutions may not use grants from New Jersey government sources to satisfy the matching fund requirements at N.J.A.C. 9A:13-1.3(a)6. New definition for “cost-effectiveness” and “Secretary” are also proposed for addition. Throughout the rules, “Commission” and “Executive Director” are proposed for replacement with “Secretary.”

N.J.A.C. 9A:13-1.3, Allocation of funds, is proposed for repeal as the original allocations have already been funded in their entirety.

Existing N.J.A.C. 9A:13-1.4 is proposed for recodification as N.J.A.C. 9A:13-1.3 with amendments. The section heading is proposed for change from “funding criteria” to “funding eligibility.” The recodified section establishes the funding eligibility criteria institutions must meet to be approved for a grant from the infrastructure fund. Paragraphs (a)3 and 4 are amended to require the institution to certify that it will use the funds, rather than just use the funds in the regulated manner.

Existing N.J.A.C. 9A:13-1.5 is proposed for recodification as N.J.A.C. 9A:13-1.4, with proposed amendments to subsection (a) to change “shall apply” to “may apply” and to clarify that the “proposal” is actually an “application.” Paragraph (a)3 is amended to clarify that the

“long-range plan” is a “long-range facilities plan” and paragraph (a)6 is proposed for amendment to add the word “originally” to clarify the technology infrastructure plan referenced in this paragraph. Paragraph (a)11 is proposed with a technical amendment that states the correct name for the set of procedures referred to and paragraph (a)13 is proposed for amendment to delete “existing” before “codes” and insert the words “all applicable laws, rules” and to use the term “Act” as proposed for redefinition. New paragraph (a)14 specifies that any additional information the institution deems necessary must meet the objectives identified in N.J.A.C. 9A:13-1.5(b).

The proposed amendment to N.J.A.C. 9A:13-1.4(b) is the removal of language pertaining to expenditures prior to “1997” and to insert language that grant funds may not be used to reimburse certain expenditures. Subsection (c) is proposed for deletion because that specific allocation of moneys was used in its entirety.

Proposed new N.J.A.C. 9A:13-1.5, Application review and approval process, details the application review process for a grant from the infrastructure fund.

Existing N.J.A.C. 9A:13-1.6(a) and (b) are proposed for replacement. The proposed new language establishes a review committee and outlines the committee’s composition that will evaluate project grant applications and make funding recommendations and indicates that the Secretary will examine the recommendations of the review committee and provide preliminary approval or disapproval of the grant based upon N.J.A.C. 9A:13-1.5(b) and grant amount via written certification. The proposed amendments to subsection (c) update terminology to that proposed in subsections (a) and (b) and requires that the Authority submit a copy of the proposed agreement to the Legislative Joint Budget Oversight Committee for review and approval. At subsection (d), the term “Commission’s authorization” is proposed for replacement with the

phrase “Secretary’s written certification” to update the subsection with terms proposed in subsections (a) and (b). New subsection (e) requires the Authority to seek the approval of the Legislative Joint Budget Oversight Committee prior to providing grant funding. New subsection (g) requires that each grant recipient shall provide the information the Secretary may request regarding the use of the grant and progress of the project.

New N.J.A.C. 9A:13-1.7, Cancellation or reduction in grants, is proposed and sets forth the process the Secretary will use to cancel or reduce the amount of a grant from the technology infrastructure fund.

As the Secretary has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement at N.J.A.C. 1:30-3.3(a)5.

Social Impact

An integrated technology infrastructure, which includes interconnectivity with and among institutions and with libraries and elementary/secondary schools, will enable students and faculty to access information and educational opportunities. Moreover, consortia arrangements and distance learning offer significant potential for increasing access to higher education. The technology infrastructure fund fosters technological enhancements to promote these aims. All New Jersey colleges and universities, as well as private institutions eligible for aid under the Independent College and University Assistance Act, are eligible to apply for grants from the infrastructure fund. Having the proposed amended rules in place will expedite institutional applications and project approval if and when the trust fund is renewed.

Economic Impact

Higher education contributes to the economic development of the nation and State by supplying an educated and trained workforce, by advancing knowledge through research and scholarship, and by serving as an information repository. An integrated technology infrastructure increases the cost-efficiency and effectiveness of colleges and universities in carrying out these missions, through both enhanced learning opportunities for students and increased opportunities for institutions to collaborate, share resources, and reduce costs. A dedicated source of funding for higher education's technology infrastructure is an investment in strengthening New Jersey's competitiveness in a global and technological economy.

Federal Standards Statement

The proposed amendments do not require a Federal standards analysis under Executive Order No. 27 (1994) because the technology infrastructure fund act was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

Jobs Impact

The proposed amendments governing the technology infrastructure fund govern only the process eligible institutions must follow to receive approval for purchases made with grant fund moneys. There will be short-term and long-term job increases associated with funded purchases. The proposed amendments will not result in the loss of any jobs.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not apply to small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to public and publicly funded independent colleges and universities and private institutions of higher education in New Jersey, none of which qualify as a small business.

Housing Affordability Impact Analysis

The proposed amendments do not require a housing affordability analysis because the rules govern the implementation of the technology infrastructure fund and there is an extreme unlikelihood that the amendments will evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The Secretary believes there is an extreme unlikelihood that the proposed rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules govern the implementation of the Higher Education Technology Infrastructure Fund Act.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

9A:13-1.1 Purpose and authority

[The following rules] **This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Technology Infrastructure Fund Act, P.L. 1997, [c.238, an act supplementing the New Jersey Educational Facilities Authority Act, Chapter 72A of Title 18A of the New Jersey Statutes] c. 238, as amended by P.L. 2012, c. 42.**

9A:13-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

[“Act” means New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72A-1 et seq.

“Amending Act” means the Higher Education Technology Infrastructure Fund Act, P.L. 1997, c.238.]

“Act” means the Higher Education Technology Infrastructure Act, P.L. 1997, c. 238, as amended by P.L. 2012, c. 42.

...

[“Commission” means the New Jersey Commission on Higher Education.

“Executive Director” means the Executive Director of the New Jersey Commission on Higher Education.]

“Cost-effectiveness” means the degree to which a project produces a positive economic analysis when considering the construction expenses, operating, and maintenance expenses, compared to the project’s resultant facilities and/or equipment, the life span of the facilities

and/or equipment, facility usage and capacity, user productivity and, where appropriate, such attributes as aesthetics, historic preservation, security, and safety.

...

“Grant” means [funds requiring approval by the Commission for a project pursuant to the Amending Act] **a grant of moneys** from the Higher Education Technology Infrastructure Fund **approved by the Secretary.**

...

“Matching funds” means funds equal to or greater than a grant from the infrastructure fund, which are allocated by the institution for the specific project for which the grant funds are used, and which are generated from institutional sources, other grants, borrowing through the Authority, or other sources **as permitted in the grant approval process. Notwithstanding anything in this definition to the contrary, grants from State government sources may not be used to satisfy the matching requirement in N.J.A.C. 9A:13-1.3(a)6.**

...

“Secretary” means the Secretary of Higher Education.

...

[9A:13-1.3 Allocation of funds

(a) Grants from the technology infrastructure fund shall be used only to acquire technology infrastructure.

(b) The grants from the technology infrastructure fund shall be allocated initially as follows:

1. \$12,600,000 for technology infrastructure at the State colleges/universities;
2. \$7,722,000 for technology infrastructure at Rutgers, the State University;

3. \$4,306,500 for technology infrastructure at the University of Medicine and Dentistry of New Jersey;

4. \$2,821,500 for technology infrastructure at the New Jersey Institute of Technology;

5. \$12,600,000 for technology infrastructure at the community colleges;

6. \$4,950,000 for technology infrastructure at private institutions of higher education;

7. \$5,000,000 for interconnectivity among higher education institutions; and

8. \$5,000,000 for nonmatching public library grants or for Statewide library initiatives through the New Jersey State Library.

(c) The Commission shall, by resolution, allocate funds to individual State colleges/universities, community colleges, and private institutions of higher education within the sector allocations above.

(d) Grants for higher education institutions shall require matching funds equal to the amount of the grant requested. The matching funds shall be used for the same purposes as the grant funds, although up to 10 percent of the matching funds may be devoted to costs directly associated with the grant but not within the definition of technology infrastructure.

(e) The Commission shall reallocate any balance in the amount authorized in (b)1 through 7 above for which the Commission has not approved a grant by March 3, 1999 or within 18 months of subsequent allocations by the Commission.

(f) No reallocation shall be made pursuant to (e) above if:

1. The grant application has been received by the Commission by March 3, 1999 or within 18 months of any amounts that are subsequently allocated by the Commission;

2. Delays are the result of Federal, State, or local government approvals or regulatory requirements not attributable to the institution; or

3. In the sole determination of the Commission there are other compelling and documentable reasons.

(g) The Executive Director shall contact all institutions to which technology infrastructure funds have been allocated 15 months after such allocation to determine what, if any, funds will become available for reallocation after 18 months.

(h) The Commission shall determine the allocation of moneys available if the State Treasurer authorizes bonds for additional grants to be issued by the Authority.]

9A:13-[1.4]1.3 Funding [criteria] **eligibility**

(a) The [Commission] **Secretary** shall **only** approve a grant from the infrastructure fund [providing] **if** the institution [meets the following criteria. The institution must]:

1. Commits, by resolution of its governing board, to maintaining the technology infrastructure proposed for purchase;

2. [Have] **Has** a long-range **facilities** plan for technology and uses the infrastructure fund grant to advance that plan;

3. [Use] **Certifies that it will use** the funds to enhance interinstitutional or intrainstitutional connectivity and information technology as it relates to advancing the instructional, research, or service/economic development missions of the institution;

4. [Use] **Certifies that it will use** the funds to advance the institution toward the next level in establishing integrated voice, video, and data networks.

5. Ensures that interinstitutional networking enhancements are compatible with the recommended technology infrastructure for New Jersey higher education;

6. Provides matching funds equal to the amount of the grant requested; and

7. Addresses training, staffing, and other indirect costs related to the proposed use of funds.

9A:13-[1.5]**1.4** Grant application

(a) [Upon] **Following** approval by the governing board at a duly authorized meeting, an institution of higher education [shall] **may** apply to the [Commission] **Secretary** for a grant from the infrastructure fund. The institution's [proposal] **application** shall include the following items:

1. - 2. (No change.)

3. A summary of the institution's long-range **facilities** plan for technology and how the proposed project advances that plan;

4. – 5. (No change.)

6. A description of how interinstitutional networking enhancements are compatible with the technology infrastructure plan for New Jersey higher education **originally** established [by the Commission and Presidents' Council based on an interinstitutional needs assessment];

7. - 10. (No change.)

11. The useful life of any equipment as determined either by reference to the Internal Revenue Service Class Life Asset Depreciation Range System set forth in [Revised] **Revenue** Procedure 87-56, as amended, supplemented, or superseded, or by appraisal of any independent engineering or accounting firm, as appropriate;

12. (No change.)

13. Certification by the institution that the project will comply with [existing] **all applicable laws, rules, codes, statutes, and government guidelines, including the principles of**

affirmative action and equal employment opportunity, where applicable, as specified in the [Amending]Act; [and]

14. Any additional information the institution deems necessary to demonstrate how the institution's proposed infrastructure project meets the objectives identified in N.J.A.C. 9A:13-1.5(b); and

[14.] **15.** Other information as the [Executive Director] **Secretary** may require on a case-by-case basis and relating to a specific [proposal] **application**.

(b) Institutions shall not use as [a match for technology infrastructure grant funds any expenditures made before July 1, 1997. Institutions may match the grant funds with expenditures made after July 1, 1997 provided that these are tied to the project(s) for which the grant funds are used,] **matching funds, and grant funds may not be used to reimburse, any expenditures made before the approval of a grant award, except in the discretion and upon approval by the Secretary** and provided that the expenditures were made for technology infrastructure and meet the requirements of N.J.A.C. 9A:13-[1.4]**1.3**.

[(c) Application for use of the \$5 million for interinstitutional connectivity shall be made by the New Jersey Presidents' Council on behalf of all institutions after completion of a needs assessment and recommendations by the Higher Education Technology Task Force, the group established by the Commission and Presidents' Council to make recommendations regarding technology and institutional infrastructure.]

[(d)] (c) The specific acquisitions proposed may be revised as a result of bidding processes, advances in technology, or for other reasons provided that the revisions are consistent with the [proposal] **application** approved by the governing board of the affected institution and by the [Commission] **Secretary**.

[(e)] (d) Grant requests shall be submitted in a format provided by the [Commission] **Secretary**.

9A:13-1.5 Application review and approval process

(a) The Secretary shall conduct a review of the applications. Such applications will be reviewed based on:

1. The completed application bearing the earliest submission date;

2. A competitive application process whereby all applications will be submitted by a date certain and will be evaluated to determine which applications are the most qualified to receive funding.

(b) In determining whether an application shall be approved for a grant, the Secretary shall consider the degree to which the proposed technology infrastructure purchase supports the following objectives:

1. Advancement of student education in the State of New Jersey;

2. Improvement and expansion of educational opportunities for students;

3. Promotion of academic research excellence, workforce readiness, and the enhancement of the State's academic and economic competitiveness and prosperity by assisting in the production of a highly skilled workforce;

4. Promotion of innovation and improvement in the delivery of higher education;

5. Advancement of study at all levels in science, technology, engineering, and mathematics education;

6. Consistency with the institution's educational mission;

7. Consistency with the institution's long-range facilities plan for technology;

8. The cost-effectiveness of the proposed infrastructure project;

9. Consistency of the proposed infrastructure project with the State's goals and priorities for development and redevelopment, including the promotion of industry clusters, job and business opportunities in areas designated by the State for growth, transportation choice and efficient mobility of goods and people, and promotion of access to opportunity for all New Jersey residents; and

10. Whether it serves the best interests of higher education in the State as a whole.

9A:13-1.6 Authorization process

[(a) Grant applications shall be approved at a public meeting of the Commission.

(b) The total dollar amount of a grant approved for any institution shall not exceed the institution's allocation as approved by the Commission.]

(a) The Secretary shall establish a review committee comprised of representation from the Office of the Secretary of Higher Education, the New Jersey Educational Facilities Authority, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, and an external advisor with technical expertise to evaluate project grant applications and make recommendations on funding.

(b) The Secretary shall examine the recommendations of the review committee and shall, via a written certification, provide preliminary approval or disapproval of the grant, pursuant to N.J.A.C. 9A:13-1.5(b) and the amount of the grant.

(c) The [Commission] Secretary shall forward to the Authority [the grant] a copy of the institution's application and [a copy of the resolution approved by the Commission] a copy of the written certification of such approval, including the amount of the grant. The Authority shall submit a copy of the proposed agreement in connection with the purchase of

technology infrastructure approved by the Secretary to the Legislature Joint Budget Oversight Committee for review. The Legislature Joint Budget Oversight Committee shall approve or disapprove each lease agreement within 10 working days of receipt or the agreement shall be deemed approved by the Legislature Joint Budget Oversight Committee and by the Secretary.

(d) Each grant awarded shall be contingent upon the recipient governing board's entering into a contract or contracts to acquire technology infrastructure within one year of the date on which the grant funds are made available. The funds shall be considered available on the date of the Authority's issuance of the corresponding bond or on the date of the [Commission's authorization] **Secretary's written certification** of the grant, whichever is later.

(e) The Authority shall not enter into an agreement with an institution of higher education without the review and approval of the Legislature Joint Budget Oversight Committee.

[(e)] (f) (No change in text.)

(g) Each recipient of a grant shall provide such information as the Secretary may request regarding the use of the grant and the progress of the project.

9A:13-1.7 Cancellation or reduction in grants

(a) The Secretary may reduce or cancel entirely the amount of a grant if the amounts are not committed within 18 months of the allocations made by the Secretary. Funds will be considered committed when an agreement has been entered into between an institution and the Authority.

(b) No reduction in the grant shall be made pursuant to (a) above if:

1. The request for approval has been received by Secretary within 18 months of the allocation;

2. The facility in which the technology infrastructure will be housed is under construction or renovation;

3. Delays are the result of Federal, State, or local governmental approvals or regulatory requirements not attributable to the institution; or

4. Other compelling and documentable reasons exist as determined by the Secretary.

9A:13-[1.7]**1.8** Reporting requirements

The Authority shall annually report to the [Commission] **Secretary** its purchases resulting from the [Amending] Act. The [Commission] **Secretary** then shall report to the Governor and Legislature on the use of the funds from the [Amending] Act.